INDEX.

Subject Index.

	Page
Jurisdiction of this court	1
The Barnette case	7
Implied repeals	10
The suggestion that Jud. Code § 33 relates only to statutory officers of the court is untenable	17

Authorities Cited.

Cases:	
Barton v. Barbour, 104 U. S. 126	7, 13
Barnette v. Wells Fargo Natl. Bk., 270 U. S. 438, 447	8, 9
Bock v. Perkins, 139 U. S. 628	12
Buck v. Colbath, 3 Wall. 334	12
Central Trust Co. v. E. T. & V. & G. R. R., 59 Fed. 523 (3), 528	13
Chicago, Burlington & Quincy R. R. v. Willard, 220 U. S. 413	1
Feibelman v. Packard, 109 U. S. 421	12
Gabelman v. Peoria R. R. Co., 179 U. S. 335, 338	11
German Natl. Bk. v. Speckert, 181 U. S. 405, 409	3
Levy's Lessees v. McCartee, 6 Pet. 103	17
Matarazzo v. Hustis, 256 Fed. 882, 887 9	8, 9, 17
Railroad Co. v. Soutter, 2 Wall. 510, 519	17
Road Commrs. v. Peirce, 90 Fed. 761	13
Rouse v. Hornsby, 161 U. S. 588, 591	12, 13
Tenn. v. Union & Planters Bank, 152 U. S. 454, 463	12
Texas & Pac. Ry. v. Cox, 145 U. S. 593, 603	9, 12
Statutes:	
Act March 3, 1875	2
Act March 3, 1887	1, 10, 12, 13
Act February 25, 1889, c. 236	1
Act August 23, 1916	9, 17
Act February 13, 1925, c. 229	5, 6
Jud. Code, § 28	1, 7, 8, 9, 10, 16
Jud. Code, § 33	2, 3, 8, 10, 11, 13, 15, 16, 17
Jud. Code, § 66	9, 10, 13, 14, 15
R. S. 643	2
21 Stat. 553	1
21 Stat. 555	2
25 Stat. 433	4
43 Stat. 938	5
11 U. S. Code § 1	17
Miscellaneous:	
Clark on Receivers, § 34	17
Report Judiciary Committee, Senate Hearings, Vol. 215	5
35 Yale Law Journal, pages 1-12	5

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 663

CHARLES E. GAY, JR., RECEIVER OF SAVANNAH & ATLANTA RAILWAY, PETITIONER,

vs.

MAJOR RUFF, RESPONDENT.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

REPLY BRIEF FOR PETITIONER.

Jurisdiction of This Court.

1. The objection to the jurisdiction of this Court is based upon that part of Judicial Code, Section 28, introduced by the Act of March 3, 1887 (24 Stat. 553), reading as follows:

> "Whenever any cause shall be removed from any State Court into any Circuit Court of the United States, *and the circuit court shall decide* that the cause was improperly removed, and order it to be remanded to the State Court from whence it came, such remand

> shall be immediately carried into execution, and *no appeal or writ of error* from the decision of the Circuit Court so remanding such cause shall be allowed." (Italics always ours.)

By the same Act of March 3, 1887, however, it was expressly provided in Section 5 (24 Stat. 555):

> "Nothing in this Act shall be held, deemed, or construed, to repeal or affect any *jurisdiction or right* mentioned * * * in Section six hundred and forty-three of the Revised Statutes."

Section 643 of the Revised Statutes is now Judicial Code, Section 33, and is the statute under which the case at bar was removed from the State Court to the District Court of the United States.

It therefore appears that the very Act of Congress, which not only expressly repealed that portion of the Act of March 3, 1875, which granted review of orders of remand by appeal or writs of error, but which went further and provided for such orders of remand to be immediately carried into execution, carefully preserved the rights of that class of officers mentioned in Revised Statutes, Section 643, Judicial Code, Section 33, and exempted them from all provisions in the Act of 1887, including the one just mentioned, which otherwise might have been held to affect or repeal the "jurisdiction" granted or "rights" acquired by the parties under that section. The part of the section invoked, therefore, does not apply to this case.

It seems to us to be no answer to say that the only persons exempted, and the only rights unaffected, were those mentioned in Revised Statutes, Section 643, as it then stood; and that because "officers of the courts of the United States" had not been granted the right of removal at that time, they cannot now claim the exemption provided by

section 5 of the Act of 1887. On the contrary, when the Congress deliberately and purposely chose Revised Statutes Section 643, Judicial Code, Section 33, as the section to be amended in 1916, when the right of removal was to be conferred upon "any officer of the courts of the United States for or on account of any act done under color of his office or in the performance of his duties as such officer," it may be assumed that the intent of Congress was to put such officers under the statute so amended, with all the exemptions and privileges theretofore granted to revenue officers and others. We know of no rule of construction that would deny to those coming under the statute by later amendment the rights, privileges and exemptions enjoyed by those officers whose class they thus join.

2. This case is not within the letter of the statute which forbids an appeal or writ of error from an order of remand entered by a District Court and provides that the order shall be carried into immediate execution. No order of remand has yet been entered in the case at bar. All that has been done is that the Circuit Court of Appeals has reversed the District Court "with directions to set aside the dismissal and remand the case to the State court" (R. 31).

It is said in the Brief of Respondent that the case "occupies the same status as if the order to remand had been granted in the District Court (Brief for Respondent, p. 9). *German National Bank* v. *Speckert*, 181 U. S. 405, 409, is relied upon by respondent to support the statement. We submit it does not support it. In the *Speckert* case, this Court merely dismissed the appeal obtained under similar circumstances to those prevailing here, and the Court did that upon the sole ground that only "final judgments" could be reviewed under the law as it then stood

and an order of remand was not such a "final" judgment. A careful analysis of the opinion of the Court, appearing on page 409 of the decision, shows that this Court was speaking of an order of remand entered by the Circuit (now District) Court and not of a decision of the Circuit Court of Appeals directing such order to be made. Mr. Justice Gray, speaking for this Court said:

> "It would be an extraordinary result if, while an order of remand by the Circuit Court, of its own motion, is not subject to review in any form, *an order of remand by that court, by direction of the Circuit Court of Appeals*, were subject to a further appeal to this court."

What Mr. Justice Gray probably had in mind was that after the appeal in the *Speckert* case had been dismissed and the order of remand had been entered in the Circuit Court, a further effort to review by direct writ of error might be made under the Act of February 25, 1889, c. 236, (25 Stat. 693) which then provided for a direct review of the decisions of the Circuit Court "in which there shall have been a question involving the jurisdiction of the court," limiting the review, however, where less than $5,000 was involved, to the jurisdictional question only. The court may have wanted to forestall such an effort.

That this court considered a decision of the nature involved in the case at bar reviewable on certiorari is illustrated by the action of the court in *Chicago, Burlington and Quincy Railway Co. v. Willard*, 220 U. S. 413, in which he opinion of the Court was written by Mr. Justice Harlan. In that case there was a motion to remand which was withdrawn in the District Court, but the Circuit Court of Appeals nevertheless inquiring into the jurisdiction of the lower court, on its own motion, reversed the District Court with directions to remand the case to the State Court. One of the defendant railways sued out a writ of certiorari.

This Court entertained it, heard the case, and affirmed the Circuit Court of Appeals. Some suggestion has been made that perhaps the plaintiff prevailed in the *Willard* case, and the case was distinguishable from the instant case on that ground. The fact is the defendant Railways prevailed in the District Court, the jury, by direction of the court, having returned a verdict for them. Of course the plaintiff was benefited by the remand finally ordered, for he got a new trial, but that fact seems quite beside the point on the question of jurisdiction.

3. The Act of February 13, 1925, c. 229 (43 Stat. 938), was intended to and does in terms provide for all decisions of the Circuit Courts of Appeals to be reviewed in this Court either by certiorari, on certified questions, or by writ of error or appeal. Section 239 of the Act provides for certified questions "in any case, civil or criminal, in the Circuit Court of Appeals." Section 240(a) provides for review by certiorari "in any case, civil or criminal, in the Circuit Court of Appeals."

One cannot read the statements of the three Associate Justices of this Court, given before the Senate Judiciary Committee in 1924, or the analysis by this Court of the Bill which later became the Act of 1925 (Report Judiciary Committee, Senate Hearings, Vol. 215), or the subsequent article by Mr. Chief Justice Taft, appearing in 35 Yale Law Journal pages 1 to 12, without reaching the conclusion that a review in this Court was intended to be allowed, under the discretionary jurisdiction of the Court, in every case where the right of appeal or writ of error was not expressly granted.

Judge Taft pointed out in his article that the Act of 1891 creating the Circuit Courts of Appeals was passed in the closing hours of the 50th Congress, and had to be enacted

as reported by the Committee without change, or it would have failed of passage; that the Act was not fully debated before passage; and that there were certain "gaps" respecting the right of review from the decisions of those courts that experience subsequently showed should have been filled.

One of those gaps, we submit, is illustrated by the *Speckert* case under its peculiar facts. By the Act of 1891 appeal or writ of error was allowed only in cases where the decision of the Circuit Court of Appeals was not by the Act made final; and a writ of certiorari could issue only in cases where, by the Act creating the court, its decisions were made final. The judgments of the Circuit Courts of Appeals were made final by the Act of 1891, in cases where jurisdiction was obtained because of the diversity of citizenship of the parties; but if the jurisdiction were obtained because the suit was one arising under the Constitution, laws or treaties of the United States, the decisions were not made final.

An appeal or writ of error could be sued out only to a "final judgment," one that ended the case. Thus it was, some cases removed from state Courts, when passed on by the Circuit Courts of Appeals, were reviewable on certiorari, and others were not. The Act of 1925 reconciled these and other inconsistencies.

As stated by respondent's counsel on the oral argument, the Act of February 13, 1925, Sec. 13, does contain a repealing clause in these words:

> "The following statutes and parts of statutes be, and they are, repealed: All other Acts and parts of Acts in so far as they are embraced within and superseded by this Act or are inconsistent therewith."

So, in conclusion on the question of jurisdiction, we submit there are three reasons why the writ of certiorari

should be entertained and the removability of the case decided. For all three of these reasons that part of Judicial Code, Section 28, invoked to defeat the jurisdiction of this Court should be held inapplicable.

The Barnette Case.

It has been suggested that the Barnette case can be distinguished from the instant case because there an effort was made to cancel a deed conveying specific property (real estate) to the receiver, and therefore as a result of the judgment, if the plaintiff prevailed, the *res* would be withdrawn from his custody. We submit the case is not distinguishable on that ground.

In the first place, a suit in tort against a receiver to recover a money judgment, if successful, eventually disturbs his possession of the *res*. In railroad receiverships, the money in the hands of a receiver is generally derived either from revenues or from borrowings. It is property. It is property lawfully in his custody. If a money judgment is recovered, and the court directs it to be paid, a certain part of the *res* is obliged to be withdrawn from his custody, and from the ultimate possession of those who, otherwise, would take it at the close of the receivership.

This very question was considered by this Court in *Barton v. Barbour*, 104 U. S. 126, 129, in which the opinion of this Court was written by Mr. Justice Woods. This case arose before the Act of 1887 in which we find the "consent" statute. The plaintiff in the court below argued that the right to sue in a court of law for a money judgment, without leave of a court appointing a receiver, would not interfere with the court's administration of the property taken into the possesion of its officer, and that such a suit was distinguishable from an action brought to recover specific property in the possession of the court. This court's reply to that argument was:

> "A suit therefore brought without leave, to recover judgment against a receiver for a money demand, is virtually a suit the purpose of which is, and effect of which may be, to take the property of the trust from his hands and apply it to the payment of the plaintiff's claim, without regard to the rights of other creditors or the orders of the Court which is administering the trust property. We think, therefore, that it is immaterial whether the suit is brought against him to recover specific property or to obtain judgment for a money demand."

It is true that in the *Barnette* case cancellation of a deed was part of the relief sought to be obtained. The land, however, was conveyed to the receiver, not to the bank before its affairs were placed in the hands of a receiver, and the purpose of so conveying it was to satisfy a demand which the receiver might have asserted against a former officer of the bank. There was also a prayer to recover certain moneys, arising in part from the sale of some of the land and in part from rent derived from it. If the basis of the decision in the *Barnette* case had been that the action in the state court interfered with the custody of specific property by the court's officer, removal would have been given scant consideration, if seems to us, and there would have been no need for this court to refer in the opinion to Judicial Code, Section 28, or to Section 33, or to *Malorazzo* v. *Hostis*, 256 Fed. 882, 887-889. The court's custody of property, or property in the custody of its officers, may always be protected from interference by any other court or officer through more summary process, *i. e.*, through injunction in aid of jurisdiction, or by restraining a party from attempted interference through suit in any other court. The court has this right to protect property being lawfully administered by it, and in *custodia legis*, quite apart from any removal statute, or indeed from any

statute at all. Courts could not function without the power, in aid of jurisdiction, to prevent interference with property in possession of its officers and being administered for the benefit of the parties at interest.

In *Matorazzo* v. *Hustis, supra*, apparently cited by this Court in the *Barnette* case in support of the statement that the case was removable under Section 28 of the Judicial Code, as supplemented by the amendment of Section 33 by the Act of August 23, 1916, the suit was a simple action in tort to recover a money judgment for the homicide of a stranger killed by a railway train. *Texas and Pacific Company* v. *Cox*, 145 U. S. 593, also cited in support of removal in the *Barnette* case, was a similar tort action.

In the *Barnette* case all of the acts and transactions complained of were done either by the receiver actually sued or by his predecessor. The suit could have been brought without leave of the court of the primary receivership because it related to acts and transactions of the receiver, and was covered by the very words of Judicial Code, Section 66. If in the state court proceedings an effort had been made to employ some extraordinary remedy, that would have resulted in the seizure of the *res*, the District Court of the United States, having primary jurisdiction in the receivership case, could have enjoined the prosecution of the proceedings. But that was not what was done. The removal was applied for and obtained, and this Court held that the suit was removable.

In the *Barnette* case there was a charge of fraud and duress practiced by the receiver upon the complaining party. If instead of suing for cancellation of the deed, an action for damages had been brought in which only a money judgment would have been obtainable (as might have been done), could it have been doubted under the decisions of this court the case would still have been removable?

Under the removal statute, Judicial Code, Section 33, the jurisdiction of the United States District Court is not made to depend upon the nature of the relief sought, whether that relief be damages, injunction or cancellation, or for the possession of, or title to, specific property. The statute makes the right to remove dependent upon the nature (official or otherwise) of the acts alleged, on the part of the defendant, which are set up as *facts*, on the basis of which it is claimed that relief should be granted.

On page 17 of the brief of the respondent, it is stated that the *Baruette* case was probably removed to the Federal court under Section 28 of the Judicial Code, because it was brought against a receiver of a corporation chartered by Congress. An examination of the record in the case, as well as the court's opinion, shows, however, that the bank of which Noyes, one of the defendants, was receiver was a Nevada corporation.

Implied Repeals.

Respondent's theory of implied repeal assumes that there is a conflict between that part of the Act of March 3, 1887, now Judicial Code, Section 66, and the amendment of 1916 of Judicial Code, Section 33. We do not concede there is such a conflict.

To begin with, Section 5 of the Act of 1887 here again, just as in the circumstances discussed on pages 1 and 2 hereof, prevents the two statutes from colliding with each other, if the interpretation given to Judicial Code, Section 66, by respondent is accepted. However, we do not accept it.

Respondent would read into Judicial Code, Section 66, usually referred to as the "Consent Statute", a provision against removal of suits brought pursuant to it. He would have this Court interpret Judicial Code, Section 66, in the

same way as the Employers' Liability Act, or the Safety Appliance Act, or Acts relating to National Banks, etc., and he would have this only because in the *Gabelman* case Mr. Chief Justice Fuller, speaking for this Court, incidentally said that he thought the intent of Congress would be defeated if the removal of suits filed in state courts were allowed where they had been brought pursuant to Judicial Code, Section 66.

It will be borne in mind the *Gabelman* case was decided in 1900; officers of the courts of the United States were given the right of removal sixteen years later. Mr. Chief Justice Fuller gave his views in 1900 of *the intent of Congress.* The intent of Congress is made more clearly and conclusively to appear by its own subsequent legislation.

The only question with which the Court was concerned in the Gabelman case, on certified questions, was whether or not *every suit* brought *against an equity receiver appointed by a court of the United States necessarily*, by virtue of his appointment alone, *arose under the Constitution and laws of the United States.* The second question certified was only a corollary of the first. This Court thought not. But the petitioner here has not removed this case because he claims it is a suit arising under the Constitution and laws of the United States. He removed it only because of the amendment of 1916 of the Judicial Code, Section 33, and because he is admittedly an officer of a court of the United States and has been sued on account of an act done under color of his office or in the performance of his duties as such officer.

But even as to the question of whether such a suit as this, against a federal equity receiver, is a suit arising under the Constitution and laws of the United States, we find it hard to reconcile the *Gabelman* case with earlier decisions of this Court, in some of which the opinions were written by Mr. Chief Justice Fuller himself.

In *Rouse* v. *Hornsby*, 161 U. S. 588, 591, Mr. Chief Justice Fuller, speaking for this Court said:

> "The jurisdiction of the Circuit Court over the petition was clearly referable to its jurisdiction of the equity suit, which depended wholly upon diverse citizenship."

In the *Hornsby* case there was an intervention, seeking damages for injuries inflicted through the negligence of the receiver in the operation of the railroad, not chartered by an Act of Congress.

In *Texas and Pacific Railway Co.* v. *Cox*, 145 U. S. 593, 603, which was a suit in tort against the receivers of a railway holding a federal charter, this court, again speaking through Mr. Chief Justice Fuller, said:

> "'As jurisdiction without leave is maintainable through the act of Congress, and as the receivers became such by reason of, and derived their authority from, and operated the road in obedience to, the orders of the Circuit Court in the exercise of its judicial powers, we hold that jurisdiction existed because the suit was one arising under the Constitution and laws of the United States; and this is in harmony with previous decisions. *Buck* v. *Colbath*, 3 Wall. 334; *Feibelman* v. *Packard*, 109 U. S. 421; *Bock* v. *Perkins*, 139 U. S. 628."

Again, in *Tennessee* v. *Union and Planters' Bank*, 152 U. S. 454, 463, this Court, speaking through Mr. Justice Gray, interpreted the decision of *Texas and Pacific Railway Co.* v. *Cox*, *supra*, and pointed out that since the right to sue, without the leave of the court which appointed the receiver, was dependent upon the Act of March 3, 1887 (Judicial Code, Section 66), necessarily any suit brought pursuant to that statute was one arising under the Constitution and laws of the United States.

In the *Gabelman* case, the earlier cases cited herein were not reconsidered and overruled. Indeed *Rouse* v. *Hornsby* was cited and was stated to be not inconsistent with what was then held, though, as we have stated, we find ourselves quite unable to reconcile the two decisions.

We might add that the dictum of Mr. Chief Justice Fuller is not only inconsistent with the earlier decisions mentioned above, but also conflicts with the views of Judge Taft while on the Circuit Court of Appeals in *Road Commissioners* v. *Peirce*, 90 Fed. 764, and with what Judge Lurton had to say while a Judge of the Circuit Court of Appeals in *Central Trust Co.* v. *East Tennessee & V. G. R. R.*, 59 Fed. 523 (3), 528.

We repeat we do not find any conflict between that part of the Act of 1887, now embodied in Judicial Code, Section 66, and the Act of 1916 amending Judicial Code, Section 33. We think the history of that part of the Act of 1887, now known as the "Consent Statute", clearly shows that it can be reconciled with the Act of 1916, and yet be given full effect.

In 1881, this court decided *Barton* v. *Barbour*, 104 U. S. 126. In that case Barton sued Barbour in the Supreme Court of the District of Columbia as receiver of a railroad company under appointment of the Circuit Court for the City of Alexandria. The action was for damages suffered by Barton as the result of a personal injury sustained in the derailment of a passenger train operated by the receiver. Barbour filed a plea to the jurisdiction of the court, to which plaintiff demurred; the demurrer was overruled and the plaintiff prosecuted a writ of error to review the judgment. This court held that the receiver could not be sued in *any court*, state or federal, without the previous leave of the court which appointed him. The result of this holding is succinctly stated in the dissenting opinion of

Mr. Justice Miller in the same case, who, inquiring why the suit could not be prosecuted, said:

> "The reply is, because he is a receiver of the road on which the plaintiff was injured, and holds his appointment at the hands of a Virginia court of chancery. If this be a sufficient answer, then the railroad business of the entire country, amounting to many millions of dollars per annum, may be withdrawn from the jurisdiction of the ordinary courts having cognizance of such matters, and all the disputes arising out of these vast transactions *must be tried alone in the court which appointed the receiver. Not only this, but the right of trial by jury, which has been regarded as secured to every man by the constitutions of the several States and of the United States, is denied to the person injured and even though his case has no element of equitable jurisdiction he is compelled to submit it to a court of chancery or one of the masters of such a court.*"

This decision was handed down less than six years prior to the date of the enactment of the "consent" statute, Judicial Code, Section 66, and was followed and applied generally until the passage of that Act. The evils to be corrected were:

(1) A man was often required to go far away from home to litigate his differences with the receiver in the appointing court.

(2) He was deprived of a right to a jury trial in what would otherwise have been a simple action at law.

(3) He could sue in other courts only with the permission of the court appointing the receiver, which was purely a matter of discretion.

These were the evils, and the Act of 1887 cured them all. It gave a right to sue the receiver for "any act or transaction of his in carrying on the business connected

with such property, *without the previous leave of the court* in which such receiver or manager was appointed."

It did not specify the courts in which such suits might be brought. This was unnecessary for the general jurisdictional statutes covered that subject. The statute shows on its face that the legislature was dealing solely with the established judicial rule requiring consent of the appointing court before suit might be filed. The Act gave the following rights:

1. A party could thereafter secure a trial in his own immediate locality (the ordinary venue and jurisdictional requirements being satisfied), because on removal the case goes to the district and division wherein the proceedings are pending.

2. He could have a trial by jury in law actions.

3. His right to sue was absolute and no longer dependent upon the discretion of any court.

If these paramount and primary mischiefs and remedies are kept in mind, and we are not diverted by thoughts of removal to which the Act of 1887, so far as the "consent" section is concerned, did not relate, it will be readily seen that both Judicial Code, Section 66, and Judicial Code, Section 33, as amended in 1916, may be given full effect without the one impinging on the other.

It has been argued that the right to sue, as used in Judicial Code, Section 66, means the right to sue to final judgment. Attention is again called to the fact that Judicial Code, Section 66, does not mention the courts in which such suits without leave of the court may be filed. Plaintiff may elect, and sue either in the State or the United States Court, as venue and his preference may determine. We are aware of no decisions which hold that legislative permission to sue generally, as distinguished

from judicial permission specially granted, means the right to sue in the forum the plaintiff chooses and to secure final judgment there if by statute removal has been authorized. The right to sue does mean the right to a final adjudication. Otherwise the right would be illusory and would be no right at all. But it does not mean the right to final judgment in any given court when rights of removal intervene. If we follow this argument, advanced on behalf of respondent, to its logical conclusion, Judicial Code, Section 66, must be held in cases where federal equity receivers are sued to have repealed those provisions of Judicial Code, Section 28, which provide for removal in cases of diversity of citizenship, or of suits arising under the Constitution, laws and treaties of the United States, etc.

Reference also has been made in the oral argument to the fact that Judicial Code, Section 33, before 1916 protected the *res*, while the Act of 1916 does not purport so to do. It is true that before 1916, certain specific property, where title was derived under a revenue law, was protected in suits against persons so acquiring it, but revenue and other officers sued, whether specific property was involved in the action or not, were likewise protected. The test of protection before 1916 was not dependent upon any *res*. We have cited in our original brief, pages 20-23, many cases where the officer was sued, and there was no need to protect any specific property, and where removal was upheld. Moreover, while there might have been some reason in the early statutes to expressly protect the *res* in the statute itself, there was no need for such provision in the Amendment of 1916. And that is so because of the familiar principle, resting upon comity of courts, that the court first taking possession of the *res* is entitled thereafter to administer it without interference from any other court. Federal equity receivers are only

appointed where there is a *res* to administer. It is idle to have a receiver unless there is something to be received. Upon appointment, and taking the *res* into possession, it is in *custodia legis*, and the jurisdiction of the court so controlling it is paramount and exclusive. This right of exclusive control by the court rests not upon statute, and is in no sense related to removal. It is expressly recognized, however, in the last clause of Judicial Code, Section 66.

The Suggestion That Judicial Code, Section 33, Relates Only to Statutory Officers of the Court Is Untenable.

1. No such limitation appears in the statute itself.

2. For many years prior to the Act of August 23, 1916, the courts had held that receivers were officers of the courts appointing them, the decisions going as far back as *Railroad Company* v. *Souther*, 2 Wall. 510, 519. See collection of authorities in *Matarazzo* v. *Hustis*, 256 Fed. 888-891. See also Clark on Receivers, Sec. 34, and cases cited. "The legislature must be presumed to use words in their known and ordinary signification." *Levy's Lessee* v. *McCartee*, 6 Pet. 102.

3. The Bankruptcy Act (11 U. S. C., Sec. 1) provides that: "'Officer' shall include clerk, marshal, receiver, referee and trustee . . . ." and a receiver in bankruptcy is thus a statutory officer of the court. Can it be that Section 33 of the Judicial Code includes *receivers in bankruptcy* and yet does not include *receivers in equity cases*, who perform the same general duties?"

4. That receivers are officers of the court, within the meaning of the statute, was conceded by the Circuit Court